IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 161 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VAGHELA RAMUJI CHATRAJI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 161 of 2001

MR MC BAROT for Petitioner No. 1

MR MANISH DAGLI, AGP for Respondent No. 1-2

MR PK JANI for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/04/2002

ORAL JUDGEMENT

Rule. Mr Manish Dagli, learned AGP for respondent Nos. 1 and 2, and Mr PK Jani, learned counsel for respondent No. 3 waive service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal.

2. The petitioner herein is a resident of village Vasai in Chanasma taluka of Patan District in North Gujarat. The petitioner was formerly the Sarpanch of the gram panchayat of the said village. The gram panchayat passed resolution dated 28.9.1999 for cutting 513 trees and to auction the same. The gram panchayat also sought permission of the higher authorities. The Collector, Patan granted permission by order dated 12.12.2000 (Annexure "C"). Pursuant thereto, the gram panchayat issued a public notice and advertised the same in a newspaper called "Hum Log" dated 30.12.2000. At that stage, the present petition came to be filed.

3. While issuing notice, this Court passed order dated 11.1.2001 not to proceed with the auction. The petition came to be resisted by the gram panchayat through affidavit in reply dated 12.4.2001 of its present Sarpanch; oblique motives were attributed to the petitioner; it was further stated that the trees in question were required to be removed for the purpose of deepening and extending the village ponds so that the same could be recharged effectively.

4. When the matter came up for hearing before this Court on 13.3.2002, the following order came to be passed:-

"It appears from the Collector's order dated 12.12.2000 that consultation with the Deputy Conservator of Forest was only on the question of value of timber which would be available on sale of trees. There is nothing on record to show that any senior officer like Conservator of Forest or Executive Engineer, Minor Irrigation, were consulted for deciding whether it was necessary to cut or remove all the trees in question numbering about 513 for deepening three ponds in question in village Vasai of Chanasma in Patan District.

2. In view of the above, it appears to the Court that it would in public interest if the Collector, Patan is directed to appoint a Committee of two officers, namely, (i) Conservator of Forest of the concerned area and (ii) Executive Engineer, Minor Irrigation of the concerned District. This Committee shall visit the site personally and after making such inquiries as the Committee members think fit, the

Committee shall submit the report to the Collector after specifically examining whether it would be necessary to cut and remove all the 513 trees for deepening the three ponds in question. The Committee shall ascertain as to how may trees would be really required to be cut and removed for achieving the object of deepening the ponds for the benefit of village people. This report shall be submitted on or before 5th April, 2002."

5. Today, Mr Manish Dagli, learned AGP has placed on record the report of the Committee consisting of the Conservator of Forests, Kachchh Circle, Bhuj and the Executive Engineer, Panchayat Irrigation Division, Patan. The report states that the Committee members visited the site with field staff of both the departments on 21st and 24th March, 2002. The report further states that the District Rural Development Agency has planned a development program under the scheme of integrated waste land development program by the Central Government. As per the said program, the three village tanks of Vasai are required to be deepened by the end of March, 2004. The work is to be carried out by the water shed committee of village Vasai as an agency of District Rural Development Agency. The report states that the development program is for deepening three tanks in Survey Nos. 859, 942 and 944 and to construct the earth bunds around the tanks for storage of rain water. After referring to all various technical requirements, the Committee has made the following recommendation :-

"After over all study on technical basis, the trees existing in all three tanks in village Vasai as mentioned below are required to cut and to remove for the development of tanks as per plan by DRDA, Patan.

Survey No.	Total area of tank in Ha.	Area having diameter Survey No. in Ha.	Trees having diameter below 60 cm	Trees having diameter above 60 cm	Total trees
859	3.00.86	1.50.00	20	64	84
942	3.11.56	2.00.00	33	69	102
944	5.56.53	2.50.00	24	97	121

Total	77	230	307

It is recommended that the auction should be carried out as per the guidelines of the Mamlatdar of Chanasma or as directed by competent authority. The cutting should be carried out only after the allotments of sufficient fund for deepening of tanks are made available. It is also recommended that the remaining trees other than 307 nos. need not required to be cut and removed as they are not obstructing the deepening work of tanks and they should be remain untouched. The cutting and removal of trees should be carried out as and when the funds are available for each tank."

6. The learned counsel for the parties submit that they have nothing further to comment on the aforesaid report nor do they have any submission to make except that the loss of trees to be cut may be compensated by trees being planted and that the report may be accepted in its entirety and appropriate directions may be issued in that behalf.

7. Accordingly, this petition is disposed of in terms of the following directions :-

(i) The public notice dated 30.12.2000 for auctioning cutting and removal of 513 trees is quashed and set aside.

(ii) The respondents shall act as per the aforesaid report of the Conservator of Forests and the Executive Engineer. The respondents shall not cut or remove any trees other than the 307 trees for which the Committee has made recommendation.

(iii) Even the trees which are required to be cut and removed shall be cut and removed, as and when the funds are available for each tank and the work of deepening the tank and construction of the earth bunds is to be taken up. The auction shall be held for the said trees in consultation with the competent higher authority.

(iv) The Vasai Gram Panchayat shall, under the guidance and supervision of a Forest Department Official, plant atleast three trees outside the tank and the bund area for every tree being cut.

For this purpose, the Collector, Patan and Mamlatdar, Chanasma shall issue appropriate instructions to the Forest Department.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

(M.S. Shah, J.)

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